



Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order:

1. Directing the Clerk of the Court to issue a check to the Distribution Agent, Gilardi & Co. LLC, from the Court Registry Investment System (“CRIS”) account number 10-cv-8266, under the case name designation “SEC v. Joseph F. “Chip” Skowron III, et al.” for \$23,172,157.69; and
2. Directing the Distribution Agent to:
  - a. Deposit these funds pursuant to Paragraph 64 of the Distribution Plan; and
  - b. Distribute these funds to Eligible Claimants in accordance with the terms of the Distribution Plan.

### **MOTION**

In accordance with the Distribution Plan for the Skowron Fair Fund approved by this Court on May 13, 2013 (“Distribution Plan”), the Securities and Exchange Commission (“Commission”) respectfully requests that the Court enter an Order: 1) For the Clerk of the Court to transfer \$23,172,157.69 from the CRIS account to Gilardi & Co. LLC (“Distribution Agent” or “Gilardi”); 2) For the Distribution Agent to deposit these funds in the Bank<sup>1</sup> pursuant to Paragraph 64 of the Distribution Plan; and 3) Authorizing the Distribution Agent to distribute these funds to Eligible Claimants pursuant to the Distribution Plan.

### **MEMORANDUM**

#### **Procedural Background**

The Commission commenced this action on November 2, 2012, and filed an Amended Complaint on April 13, 2011, alleging that Dr. Yves M. Benhamou (“Benhamou”), a French

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Distribution Plan approved by the Court.

doctor and medical researcher who served on a Steering Committee overseeing a clinical drug trial run by Human Genome Sciences, Inc. (“HGSI”), tipped material, non-public information about the trial to Dr. Joseph F. Skowron III (“Skowron”). Skowron, who was then a portfolio manager of six healthcare-related hedge funds, used the information to sell the hedge funds’ holdings of HGSI stock ahead of a January 23, 2008 negative announcement, enabling the funds to avoid losses of approximately \$30 million.

By separate orders dated November 16, 2011, the Court entered Final Judgments as to defendants Skowron and Benhamou, and as to Relief Defendants FrontPoint Healthcare Centennial Fund, L.P., FrontPoint Healthcare Flagship Enhanced Fund, L.P., FrontPoint Healthcare Flagship Fund, L.P., FrontPoint Healthcare Horizons Fund, L.P., FrontPoint Healthcare I Fund, L.P., and FrontPoint Healthcare Long Horizons Fund, L.P. (the “FrontPoint Healthcare Funds”). Pursuant to the Final Judgments, Defendants and Relief Defendants paid a combined total of \$35,801,200 to the Court in disgorgement, pre-judgment interest and civil penalties. Such funds were subsequently deposited into an interest bearing account in the Court Registry Investment System under the case name designation “SEC v. Joseph F. “Chip” Skowron III, et al., No. 10-CV-8266-DAB (S.D.N.Y.).”

On April 26, 2012, the Commission moved the Court to create a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002 for the purpose of distributing the funds to harmed investors. The Commission also requested that the Court appoint Gilardi as the Distribution Agent. The Court granted the Commission’s motion to establish the Fair Fund and appoint Gilardi as the Distribution Agent on June 4, 2012.

On March 5, 2013, the Commission filed a motion requesting the Court approve a distribution plan for the Skowron Fair Fund. The Court granted the motion and approved the Skowron Distribution Plan on May 13, 2013.

**Disbursement of Fair Fund**

The current balance of the Fair Fund is approximately \$35,683,119.54 and is held by the Court in an interest-bearing CRIS account. Pursuant to the Distribution Plan, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Claimants and the Recognized Losses for each Eligible Claimant. As the amount of the Net Available Fund is greater than the aggregate Recognized Losses, all of the Eligible Claimants' Recognized Losses will be compensated at 100%. The Distribution Agent has also submitted the Affidavit of Nashira Washington in support of this Motion, which provides a detailed explanation of the procedures the Distribution Agent used to develop the list of Eligible Claimants (the "Affidavit"), filed herewith. The list of Eligible Claimants, the Recognized Losses for each, and the Affidavit has been reviewed by the undersigned Commission Counsel who has no objections.

**WHEREFORE**, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: July18, 2014

Respectfully submitted,

/s/ Nichola L. Timmons  
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